

Yakama Nation sues county over approach to proving water adequacy

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The Yakama Nation has filed a lawsuit against Okanogan County, claiming that the county's approach to assuring there is adequate water for any new development threatens holders of water rights, which includes preserving enough water in rivers and streams to support fish.

The case, filed by the Confederated Tribes and Bands of the Yakama Nation in Okanogan County Superior Court on Jan. 17, is the first filed against the county for its approach to complying with a recent state Supreme Court ruling that requires counties to assure water is physically and legally available for any new building or development.

The Yakama Nation manages fisheries in Okanogan County and its members have treaty-reserved fishing rights, which the county's approach puts at risk, according to the lawsuit.

The lawsuit is the second filed against the county by the Yakama Nation over water issues. It builds on some of the same charges as the tribes' previous complaint, which charges that the county's zoning code fails to protect the quality and quantity of groundwater.

The Supreme Court ruling (often called "Hirst," for the lead plaintiff) put the obligation on counties to assure that any new development won't harm existing senior water rights. Water for instream flows — the water that goes into rivers and streams for fish — is considered a senior water right. The ruling said counties can't rely on the Department of Ecology to make this determination.

The Okanogan County commissioners adopted a new section in the county code at the end of December requiring all applicants for building permits to demonstrate that they have the right to water and that their water use will not impair any existing water users.

The county's planning director is responsible for approving the applications, but the applicant must furnish information — such as hydrology studies and well logs — to support the claim of legal and sufficient water. Applications for new subdivisions will be reviewed by the county's hearing examiner.

The new policy applies to users of what are called "exempt wells," which allow up to 5,000 gallons of water for a single-family home, including a half-acre garden and water

for livestock. Most new houses outside cities and towns in the county rely on exempt wells for water. Exempt wells don't need water rights, which require a certificate from Ecology.

The suit filed by the Yakama Nation charges that the county improperly delegates responsibility for proving water adequacy to people building a house. It contends that the county code does not provide standards or a process for the county to meet its burden to assure water adequacy.

"It remains the County's responsibility to *independently* assure that water is both factually and legally available for the proposed land use prior to approval," the Yakama Nation said in its legal complaint (*italics in original*).

By asking each applicant to prove water adequacy, the county also fails to account for the potential cumulative impacts of water consumption by different projects throughout the county, according to the Yakama lawsuit.

The Yakama Nation also contends that the county should have done an environmental analysis of the impacts of its water and land-use policies.

The Yakama Nation lawsuit takes issue with the fact that senior water right holders must file an appeal if they believe a new water use will impair their water rights. Because the county plans to notify only adjoining property owners and water-right holders in the same watershed, some water users — including the Yakama Nation — could miss the opportunity to protect their interests, they contend.

The Yakama Nation did not respond to a request for comment on the lawsuit. Okanogan County has 30 days to file a response.